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*The Power of  
Knowledge and Leadership*

STATEMENT OF  
JEFFREY FINKLE, CEcD  
PRESIDENT AND CEO OF THE INTERNATIONAL ECONOMIC  
DEVELOPMENT COUNCIL

BEFORE THE  
HOUSE ENERGY AND COMMERCE COMMITTEE,  
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER  
PROTECTION



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President and CEO, the International Economic Development Council (IEDC)  
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**October 19, 2005**

Chairman Stearns, Ranking Member Schakowsky, and Subcommittee members, thank you for the opportunity to appear before you today. I am honored to be here and to discuss the experiences of economic development professionals. We hope our experiences can be an important source of information as Congress reviews the rights of local officials to exercise eminent domain in an effort to protect the economic health and vitality of their communities.

My name is Jeff Finkle, and I am the President and CEO of the International Economic Development Council (IEDC.) IEDC is the premier membership organization dedicated to helping economic development professionals create high-quality jobs, develop vibrant communities and improve the quality of life in their regions. You and your colleagues here in Congress work with our members each and every day to create economically vibrant communities in your districts back home. IEDC provides information to its members on the appropriate use of eminent domain through two publications we have included at the end of our testimony.



Before I begin my formal comments, I'd like to tell you about my experience in our profession. I have been in the economic development field for nearly 25 years and am the former U.S. Department of Housing and Urban Development (HUD) Deputy Assistant Secretary of Community Planning and Development during the Reagan Administration. In that role, I was HUD's Deputy Assistant Secretary in charge of the Urban Development Action Grant Program (UDAG), the Community Development Block Grant Program (CDBG), and the Housing Rehabilitation program from 1981-1986. Since then I have been leading our professional association as our members build vibrant local economies.

For our profession, eminent domain is an economic development tool that allows local communities to acquire and assemble land for new development projects that generate new jobs, investment and taxes. The Supreme Court's 5-4 decision in *Kelo v. New London* leaves eminent domain in the hands of states and affirms eminent domain as an important tool for local governments in the redevelopment and revitalization of economically distressed areas.

The court stated in its opinion that the pursuit of economic development is a "public use" within the meaning of the Fifth Amendment's Takings Clause. The New London economic development project at issue in the case is similar to projects across the country aimed at revitalizing depressed communities.

It is IEDC's understanding, based on conversations with attorneys familiar with the decision, that the Supreme Court decision did not in any way expand the power of eminent domain. Rather, the Court simply upheld the long-standing inclusion of economic development as a 'public use.'



It is therefore unlikely that the Supreme Court's decision will result in city officials exercising eminent domain randomly or without balanced consideration. The Court's decision affirmed years of interpretations allowing the use of eminent domain to redevelop our nations' communities and to protect our local economies.

Judiciously used eminent domain is critical to the economic growth and development of cities and towns throughout the country. Assembling land for redevelopment can be an important element in the process of revitalizing local economies, creating much-needed jobs, and generating revenues that enable cities to provide essential services. When used prudently and in the sunshine of public scrutiny, eminent domain helps achieve a greater public good that benefits the entire community.

There are many examples of the public benefit of the judicious use of eminent domain. One example of can be seen in the return of retail to our urban cores. Eminent domain has been crucial in encouraging retailers, particularly anchor tenant supermarkets, to locate in the heart of inner cities rather than on the periphery where they have traditionally positioned themselves. A combination of educational efforts, land assembly, and economic development incentives are encouraging the supermarkets that abandoned inner cities in the 1970s to return.

For example, South Los Angeles, CA, a densely populated urban area that is critically underserved by retail, will soon have a vibrant shopping area thanks to the successful employment of eminent domain. The Slauson Central Shopping Center will be the first retail shopping center in the community in over 20 years. The supermarket-anchored shopping center will include a state-of-the-art grocery store along with small shop space, two freestanding commercial areas and a community Educational Training Center. The project will create approximately 150



new permanent jobs in the community and will bring grocery services close to thousands of low-income residents.

Successful redevelopment projects facilitated by eminent domain are proving that there are underserved populations/markets, and that perceived or actual higher costs of doing business in inner cities can be absorbed by sales volume. Without the ability to exercise the power of eminent domain for redevelopment purposes, the public would be unable to support many inner-city retail projects, and those neighborhoods would continue to decline.

Eminent domain has also strengthened suburban economies. In the early 1990's the city of Lakewood, CO was a Denver suburb at an economic crossroads due to a struggling shopping mall. Then, the Lakewood Reinvestment Authority and a developer decided to redevelop the mall into a mixed-use town center. The result is Belmar, 22 city blocks of stores, entertainment, office space, and residences that have emerged as the symbolic heart of the community and center of Denver's Metro West Side.

Eminent domain has also helped our struggling rural communities. In March 2002, Shawnee County, Kansas exercised its power of eminent domain to acquire the last few remaining parcels of a 432-acre site intended in part for a new Target Corporation distribution center. Although two property owners fought the condemnation proceedings primarily on the grounds that the distribution center did not satisfy a "public use," the Kansas Supreme Court ultimately ruled that the taking of private property for industrial and economic development was in fact a valid public purpose. The \$80 million, 1.3 million square-foot warehouse distribution center opened in June 2004 to the tune of over 600 new jobs, with the expectation of adding an additional 400 jobs within the next three years.



Whether you represent an urban, suburban or rural area, the use of eminent domain is never the first choice of any community. The eminent domain process is time consuming and expensive; it is therefore the last resort pursued during a land assembly process. Many local authorities rarely exercise their power of eminent domain, particularly when it deals with occupied housing. Public officials who do use eminent domain comply with existing rules protecting individual property owners, and they have the ultimate accountability to the citizens and voters.

There is no question that eminent domain is a power that, like any government power, must be used prudently, and there are many built in checks. One such check is the public nature of the takings process. Probing questions should be raised about any complex undertaking financed by taxpayers, and nothing in local government attracts more scrutiny or more criticism than eminent domain.

In their majority opinion in *Kelo*, the Supreme Court refers favorably to New London's long engagement in an open and comprehensive planning process. There are many other examples of public officials engaging their constituents. When Lakewood, CO began the process of redeveloping their failing mall, the city underwent an extensive public process that over the course of one year established a citizens advisory committee and invited members of the community to comment on potential redevelopment options.

Each of your states and localities legislates the use of eminent domain, and a public purpose or benefit needs to be clearly demonstrated. Authorities that abuse this privilege risk creating volatile political situations. Few government or elected officials are willing to risk their position and political stability in pursuit of a project overwhelmingly opposed by the community.

In another check on abuse, the Fifth Amendment requires that anyone whose property is taken for a public use be fairly compensated, and in practice, most takings are compensated generously. In case after case, the majority of property owners willingly accept just compensation for their property. According to our research, some are compensated as much as 25% above market value for their property. Just compensation allows property owners to relocate with an equal or improved quality of life.

Critics of the *Kelo* decision have said that it authorizes seizing the property of one person merely to give it to another. While it is true that once the public entity acquires title to the property, it is conveyed to a developer or end user to carry out the project, the public sector intervenes so that the private sector can bring much needed investment to a distressed area. Government agencies are not and should not be in the private real estate development business; therefore, the assembled land is typically leased or sold to the private sector for redevelopment. As a matter of policy, cities should not be in the long-discredited practice of building redevelopment projects; rather they should facilitate the use of private capital and private management to achieve the same end.

The use of eminent domain has evolved over the years from a 'bulldozer' technique to today's careful surgical approach. In the 1960s the federal government gave cities resources under the Urban Renewal Act to plow down hundreds of acres of land and thousands of homes and commercial buildings. That left many cities with land vacant for years. This policy has since been attacked by many as an inefficient use of resources. Today, economic development professionals wait until there is a specific market opportunity before we use eminent domain to acquire distressed properties. If your district's officials



have to wait for land assembly holdouts, your communities will see jobs and market opportunities disappear.

In closing, I would like to comment on pending eminent domain legislation. In response to the Kelo decision, Congress is offering legislation that would prohibit the use of federal funds for economic development projects that involve the exercise of eminent domain. Should Congress act to prohibit the use of eminent domain for economic development purposes, the economies of many Congressional districts will suffer. No municipality in America could use eminent domain to carry out an economic development project.

Communities impacted by hurricanes Katrina and Rita are of special concern to us all. While IEDC members in the region are grateful for the billions of dollars the federal government has pledged to support economic and infrastructure redevelopment, gulf coast communities impacted by the hurricanes will face incredibly complicated and expensive redevelopment challenges. In order to redevelop devastated communities, states and localities will first need to raze crumbling homes and businesses.

We are very concerned that proposed Congressional legislation limiting the use of federal funds for eminent domain would allow one landowner to veto the redevelopment of an entire distressed area. This would have the practical effect of thwarting the ability of communities to demolish ruined infrastructure and begin successful redevelopment plans, further distressing an already devastated area.

In IEDC's opinion, Congress should not preempt or displace existing state and municipal laws that govern the local application of eminent domain. The Supreme Court's decision keeps the economic health of communities in the hands of local





leaders who are not out to destroy communities, but rather who work for the best interests of their communities at large. State or federal bills prohibiting the use of eminent domain for economic development are job-killing pieces of legislation.

Assembling land for redevelopment helps revitalize local economies, create much-needed jobs, and generate revenues that enable your communities to provide essential services. Exemplified by New London, eminent domain is used to breathe new life and give new hope to residents.

Thank you again for the opportunity to speak with you today.



## **EMINENT DOMAIN GUIDING PRINCIPLES**

1. When a public agency engages in land assembly, the process should be open to community stakeholders such as residents and local businesses.
2. Eminent domain should be employed as a last resort in the land assembly process and only when a property owner, after attempted negotiations, refuses to sell at a fair market value. To protect landowners, independent appraisals should be conducted.
3. All reasonable efforts should be made to avoid taking occupied residences and active businesses. A community must carefully weigh the benefits of redevelopment against the hardship associated with displacement.
4. When eminent domain is used in the taking of occupied property, relocation costs should be covered for the property owner. This may also include providing assistance to homeowners in finding a new home.
5. Before initiating the eminent domain process, municipalities should carefully review the legal parameters of the process as provided in their local charter. The process should be fully documented and completely transparent.
6. States that only allow the use of eminent domain for blighted land and property need to establish a clear definition of blight. This will reduce ambiguity for municipalities initiating the eminent domain process. Municipalities should establish a standardized approach in land assembly and eminent domain to provide consistent expectations amongst stakeholders.

## EMINENT DOMAIN: MYTH VS. REALITY

**Myth 1:** Eminent domain is a quick and low cost means of acquiring land.

**Reality:** Eminent domain is more expensive and time consuming than the traditional method of land acquisition through negotiated purchase. Land acquired through eminent domain is often acquired at a price above fair market value. Unfortunately, the related legal fees frequently nullify any sales price premium benefits for the landowner. The acquiring agency is often affected even more by the premium price and legal costs associated with eminent domain.

**Myth 2:** Eminent domain is typically used as the first option in the land assembly process.

**Reality:** The eminent domain process is time consuming and expensive; it is therefore the last resort pursued during a land assembly process. Many local authorities rarely exercise their power of eminent domain.

**Myth 3:** State and local authorities promote urban redevelopment for the sole purpose of increasing the tax base.

**Reality:** Eminent domain is an important tool in revitalizing declining areas. Redevelopment projects remove blight, create jobs, and increase private investment in an area. Tax base growth is only one potential benefit.

**Myth 4:** The use of eminent domain violates private property rights.

**Reality:** Local and state authorities have the constitutional power to acquire property through eminent domain on the condition of just compensation.

**Myth 5:** Eminent domain is a government tool used to strip individuals of their private property rights.

**Reality:** Each state legislates its use of eminent domain. A public purpose or benefit generally needs to be clearly demonstrated. Authorities that abuse this privilege risk creating volatile political situations. Few government or elected officials are willing to risk their position and political stability in pursuit of a project overwhelmingly opposed by the community.

**Myth 6:** Local authorities and private developers undertake land assembly and eminent domain without involving the community.

**Reality:** Most local governments or redevelopment agencies incorporate community participation early on in a redevelopment initiative. There are many cases that demonstrate successful collaboration between community, private sector, and government representatives in the revitalization of distressed areas.

**Myth 7:** The government employs eminent domain to take property from one owner and give it to another owner that is financially or politically stronger. State

and local governments use eminent domain as part of corporate incentive packages that benefit specific businesses.

**Reality:** Eminent domain is part of the land assembly process for redevelopment with the intent to remove blight and/or create jobs and/or create housing. The public sector intervenes so that the private sector can bring in much needed investment in a distressed area. Government agencies are not in the private real estate development business, therefore, the assembled land is typically leased or sold to the private sector for redevelopment. Often the prices and terms of the deals are very favorable because 1) the location and characteristics of the property are otherwise very unfavorable, and/or 2) the private party can create or retain much-needed jobs.

**Myth 8:** The flexible definition of blight facilitates the state's power in repossessing land.

**Reality:** Each state has its own definition of blight. Some have a strict test for blight, requiring physical or economic decline. Others have a more flexible definition. A few states do not have a blight requirement as a condition of eminent domain, but require that the project lead to job creation. There have been some highly publicized cases of local governments who have abused the blight designation to justify government repossession of land. These negative cases highlight the need for states to clarify their intentions and incorporate community involvement in defining eminent domain regulations.

**Myth 9:** The public money spent on assembling land for private use is tax money that will forever be lost to the community.



**Reality:** Initial public money invested is recaptured through increased tax revenue generated by the increase in property values and retail sales. In a well-planned project, the return on investment usually exceeds the initial cost. Furthermore, the benefits of redevelopment go beyond tax recovery to include job creation and area revitalization.

**Myth 10:** Land assembly and condemnation activities position a municipality as a real estate broker and developer in what has traditionally been private land deals. The free market can and will allow for redevelopment of older areas without any government intervention.

**Reality:** In many cases, a large, blighted area is comprised of numerous small properties. Private developers are reluctant to spend the time and money necessary to acquire each property with no assurance that they will ever assemble a large enough site to develop. Without land assembly assistance in urban areas, developers are likely to choose large tracts of undeveloped land on the suburban/city fringe. Such actions promote sprawl. Urban land assembly curtails sprawl and encourages smart growth.

**Myth 11:** Eminent Domain is an unnecessary tool for economic development.

**Reality:** Eminent domain is an important tool for economic development. Eminent domain gives communities a last resort option to help ensure that significant development opportunities are not hindered when reluctant landowners refuse to negotiate fair sale of their property. Without this valuable tool, local economic development professionals would not be able to sufficiently assemble land for beneficial redevelopment and public gain.